

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RONALD PHILLIP BURBRIDGE,

Defendant-Appellee.

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UNPUBLISHED

March 4, 2008

No. 273133

Wayne Circuit Court

LC No. 02-011791-01

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Following an earlier remand by this Court for resentencing, the trial court again departed downward from the sentencing guidelines (162 to 270 months) to sentence defendant to 6 to 15 years in prison for second-degree murder, MCL 750.317.<sup>1</sup> Plaintiff appeals as of right, challenging the trial court's downward departure from the sentencing guidelines. We hold that the trial court's downward departure was based on proper objective and verifiable factors, and that the trial court did not abuse its discretion when it found that the factors were substantial and compelling reasons to depart from the sentencing guidelines. We therefore affirm defendant's sentences.

In considering a trial court's departure from the sentencing guidelines, the existence of a factor used for departure is reviewed for clear error, whether such a factor is objective and verifiable, reviewed de novo, and whether there is substantial and compelling reason to justify a sentencing departure is reviewed for an abuse of discretion. *People v Babcock*, 469 Mich 247, 265; 666 NW2d 231 (2003). In this context, a reasonable and principled outcome does not constitute an abuse of discretion. *Id.* at 269.

A trial court may depart from the statutory sentencing guidelines only if there is a "substantial and compelling reason" for the departure, and it states on the record its reasons for departure. *Babcock, supra* at 255, quoting MCL 769.34(3). In order to qualify as substantial and compelling, a reason must be "objective and verifiable."<sup>2</sup> *Id.* at 257-258. A substantial and

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<sup>1</sup> Although not in dispute, the trial court also imposed a mandatory two-year consecutive sentence for possession of a firearm during the commission of a felony, MCL 750.227b.

<sup>2</sup> "Objective and verifiable factors are those that are external to the minds of the judge,  
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compelling reason must be a reason “that ‘keenly’ or ‘irresistibly’ grabs the court’s attention and is of ‘considerable worth’” in deciding the length of a sentence. *People v Hendrick*, 472 Mich 555, 563; 697 NW2d 511 (2005). A substantial and compelling reason exists only in exceptional cases. *Babcock*, *supra* at 258.

The trial court based its downward departure on its findings that the facts of the crime mitigated defendant’s culpability,<sup>3</sup> that defendant received strong family and community support in the form of “over twenty letters” citing “examples of [defendant’s] generosity, concern, and community involvement,” that defendant was thirty-four years old and had no prior criminal record, that “defendant had not received any misconduct while incarcerated for four years” and “received the best possible score on 13 specific measures of job performance,” and that defendant cooperated with the police pre and post-arrest.<sup>4</sup>

In relevant part, “in evaluating whether a case presents substantial and compelling reasons to depart below the mandatory minimum, courts [may consider] mitigating circumstances surrounding the offense,” *People v Fields*, 448 Mich 58, 76; 528 NW2d 176 (1995),<sup>5</sup> a defendant’s prior record if it is coupled with his age, *People v Young*, 276 Mich App 446, 454-456; 740 NW2d 347 (2007), a defendant’s pre and post-arrest cooperation with law enforcement officials, *People v Michielatti*, 266 Mich App 223, 226-227; 700 NW2d 418 (2005) reversed in part on other grounds, 474 Mich 889 (2005), whether a defendant has strong “family [and community] support,” *Id.* at 227, and a defendant’s post-conviction record and behavior, *Fields*, *supra* at 78-79; *People v Shinholster*, 196 Mich App 531, 535; 493 NW2d 502 (1992). Furthermore, the letters written in support of defendant, defendant’s post conviction behavioral and work records, defendant’s age and lack of a prior criminal record,<sup>6</sup> and sworn testimony

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defendant, and others involved in making the decision, and are capable of being confirmed.” *People v Geno*, 261 Mich App 624, 636; 683 NW2d 687 (2004).

<sup>3</sup> The trial court specifically found that defendant’s “attempts to contact his pastor, and police authorities [regarding alleged instances with the victim] demonstrate[d] his desire to seek intervention [from] individuals in authority to stop [the victim’s] harassing and threatening behavior,” and thus, mitigated his culpability. The trial court additionally found that defendant’s actions of making sure others, in particularly women and children, were not in danger during the incident also mitigated his culpability.

<sup>4</sup> The trial court specifically noted that defendant cooperated by telling someone to call the police, remaining “at the scene until the police arrived,” confessing to the police that he shot the victim, “securing the weapon, [and] directing the police to the victim’s body.”

<sup>5</sup> Although *Fields* was decided before the enactment of the Legislative Sentencing Guidelines, *Fields* is still good law as it has recently been applied by this Court and our Supreme Court. *People v Michielatti*, 474 Mich 889; 704 NW2d 705 (2005); *People v Young*, 276 Mich App 446, 454-456; 740 NW2d 347 (2007).

<sup>6</sup> The trial court stated that defendant “has demonstrated an ability to be *crime free* and adapt to societal norm” when it listed “defendant’s *lack of [a] prior record*” as an objective and verifiable reason to support a downward departure. (Emphasis added.) However, the trial court’s heading made it clear that it was using defendant’s lack of a prior record as one of its objective and verifiable reasons to support its downward departure, not the fact that it believed defendant was “crime free.” A defendant’s ability to remain “crime free” has never been applied as an

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from witnesses regarding (1) defendant's pre and post-arrest cooperation, (2) defendant's efforts to contact his pastor and police authorities regarding alleged instances with the victim and (3) defendant's efforts to make sure that women and children were not in danger during the fatal incident with the victim, are all clearly objective and verifiable because all are capable of verification in the record, which amply supports each finding. *People v Geno*, 261 Mich App 624, 636; 683 NW2d 687 (2004).

In conclusion, and giving deference to the trial court's conclusion regarding whether substantial and compelling reasons for departure exist, we hold that the trial court did not abuse its discretion when it found that the aforementioned objective and verifiable factors "keenly" and "irresistibly" grabbed its attention and were of "considerable worth" in deciding the length of defendant's sentence, and thus, were substantial and compelling reasons to justify a downward departure. *Babcock, supra* at 257-258, 265.

Affirmed.

/s/ Christopher M. Murray  
/s/ Joel P. Hoekstra

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objective and verifiable factor in determining whether a downward departure should be made, but the existence or lack of a prior record has. See *Fields, supra*; *Young, supra*. In fact, whether or not a defendant has remained crime free could only be objective and verifiable to the extent that it is documented in his prior record. *Geno, supra* at 636. Therefore, regardless of whether the trial court's finding that defendant was "crime free" was clearly erroneous, the fact remains that the trial court properly relied on an objective and verifiable factor (defendant's lack of a "prior record") in determining whether substantial and compelling reasons existed to support a downward departure.